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JUDGE GARDEPHE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CV 0719

NFT FUNDING LLC,

Plaintiff,

-against-

PATRICK M. NESBITT and
PATRICK M. NESBITT FAMILY TRUST,

Defendants.

Case No. ________

COMPLAINT

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CASHIERS

Plaintiff NFT Funding LLC ("Plaintiff"), by its attorneys Katten Muchin Rosenman LLP, as and for its Complaint against defendants Patrick M. Nesbitt and the Patrick M. Nesbitt Family Trust (each a "Guarantor," and collectively, the "Guarantors" or "Defendants"), alleges as follows:

Nature of the Action

1. This is an action to enforce the contractual obligations of Defendants, as Guarantors, under a "Full Recourse Guaranty," as subsequently defined, which guaranteed repayment of a mezzanine loan in the original principal amount of $60,600,000 (the "Loan") (having a current principal balance of not less than $70,548,812.60), made by Lender's predecessor-in-interest to Nesbitt Family Trust Holdings LLC and Nesbitt Family Trust 3 LLC

(together, the "Borrower"). Guarantors are the direct or indirect owners of the Borrower. Borrower is the indirect owner of several portfolios of hotels and other real property located throughout the United States. The properties are encumbered by property-level senior first mortgage debt. In addition, ownership of one of the portfolios was, at one time, encumbered by a senior mezzanine loan.

2. By the express terms of the Full Recourse Guaranty, Guarantors absolutely, unconditionally, and jointly and severally guaranteed to Lender, among other things, the due and punctual payment of the Loan and all other indebtedness and monetary obligations of Borrower and the due and punctual performance of all covenants, agreements and obligations of Borrower under the "Loan Documents," as subsequently defined.

3. Beginning several months ago, a progressive series of material defaults occurred on the Loan. First, the senior mezzanine loan was repaid through borrowings or replacement debt incurred by Defendant Nesbitt, a Guarantor, without Lender's consent, in violation of the Loan Documents. Furthermore, when asked about these borrowings, Borrower and Guarantors failed to fully disclose the terms thereof, in violation of the Loan Documents. The terms that were disclosed indicated that the borrowings undertaken by Defendant Nesbitt impaired Lender's ability to obtain repayment of its Loan and to protect its interests in Loan collateral, the Full Recourse Guaranty and the other sources of repayment to be utilized in the event of a default. Shortly thereafter, a senior mortgage loan on one of the portfolios matured and was not repaid, in violation of the Loan Documents, creating risk that the portfolio's assets and cash flow would be lost. Then, in further violation of the Loan Documents, Borrower stopped causing any excess cash from the various portfolios to be distributed up and deposited to accounts from which interest on the Loan was paid. Thereafter, Borrower failed to pay the full amount of the monthly

interest payment due December 10, 2010, or any subsequent monthly payment, in violation of the Loan Documents. None of these defaults has been cured to date.

4. As a result of Borrower's multiple uncured breaches of the "Loan Agreement," as subsequently defined, Lender declared "Events of Default" under the Loan Documents and accelerated the Loan, declaring all principal amounts currently outstanding on the Loan, together with all applicable interest, fees and costs, immediately due and payable. However, Borrower has failed and refused to pay any of the outstanding indebtedness due and owing on the Loan.

5. Accordingly, under the express terms of the Full Recourse Guaranty, Guarantors are obligated to immediately pay to Lender all unpaid indebtedness, including all principal, interest, fees and costs. To date, Guarantors have failed and refused to honor their obligations under the Full Recourse Guaranty at issue. Lender therefore seeks judgment, jointly and severally, against Guarantors based on their breach of their express contractual obligations under the Full Recourse Guaranty, including principal in an amount not less than $70,548,812.60, together with accrued and unpaid interest, and reasonable attorneys' fees and costs (which are recoverable under the Full Recourse Guaranty).

The Parties

6. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York. Plaintiff's sole members are NFT Holding LLC and RKB-NFT Holding LLC. NFT Holding LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. The sole member of NFT Holding LLC is Stonegate Revocable Trust UAD 12/31/96, a trust organized under the laws of the State of Connecticut. The sole trustee and beneficiary of Stonegate Revocable Trust UAD 12/31/96 is an

individual who is a citizen of the State of New York. RKB-NFT Holding LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Scottsdale, Arizona. The sole member of RKB-NFT Holding LLC is an individual who is a citizen of the State of Arizona.

7. Upon information and belief, Defendant Patrick M. Nesbitt ("Nesbitt") is an individual who is a citizen of the State of California.

8. Upon information and belief, Defendant Patrick M. Nesbitt Family Trust (the "Nesbitt Family Trust") is a trust organized under the laws of the State of California, whose sole trustee is Defendant Nesbitt. Upon further information and belief, the beneficiaries of the Nesbitt Family Trust are Nesbitt and his children, each of whom is a citizen of the State of California.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds $75,000, exclusive of interest and costs. In the Full Recourse Guaranty, Guarantors irrevocably consented to the personal jurisdiction of any federal or state court in New York, New York in any action arising out of or relating to the Full Recourse Guaranty.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a). Venue also is proper in this judicial district because, as alleged below, the Full Recourse Guaranty provides that any action arising thereunder may be instituted in any federal or state court in New York, New York, and the Guarantors expressly waived any objection to the venue of any such action and any claim of *forum non conveniens*.

Factual Background

11. On or about September 11, 2007, Goldman Sachs Bank USA ("Goldman Sachs"), as lender, and Borrower entered into a certain loan agreement. That loan agreement was later amended by that certain First Amendment to Loan Agreement dated as of December 1, 2008, and that certain Second Amendment to Loan Agreement dated as of September 4, 2009 (collectively, the "Original Loan Agreement").

12. To induce Goldman Sachs to enter into the aforesaid First Amendment to Loan Agreement, Guarantors executed a certain Full Recourse Guaranty dated as of December 1, 2008 (the "Original Guaranty"), a copy of which is attached hereto as Exhibit A-1.

13. On or about October 16, 2009, Goldman Sachs, as "Lender," and Borrower executed the Amended and Restated Loan Agreement (the "Loan Agreement"), a copy of which is attached hereto as Exhibit B. The Loan Agreement amended and restated the Original Loan Agreement in its entirety to provide for further extensions of the scheduled maturity date, reflect a mandatory reduction in the principal amount of the Loan, modify the interest rate and make other changes to the terms and conditions of the Loan facility.

14. In connection with the Loan Agreement, Borrower executed an Amended and Restated Promissory Note in the original principal amount of $60,600,000 (the "Note"), a copy of which is attached hereto as Exhibit C (the Note, together with all other documents, agreements and instruments arising therefrom or related thereto, as the same may have been amended from time to time prior to the date hereof, are referred to herein as the "Loan Documents").

15. By its terms, the Note accrues regular interest at an "Accrual Rate" of 20% per annum (and default interest at a rate of 25% per annum). The Loan Agreement requires excess cash flow from portfolio properties, generally referred to as "Distributable Funds," to be

distributed daily up to and deposited into "Lender Accounts" in the control of Lender to be used to pay monthly interest payments on the Loan. The Note and Loan Agreement also require certain minimum amounts of interest to be paid, and if Distributable Funds are insufficient to pay the minimum monthly payment, Borrower is obligated to deposit additional funds sufficient to pay the minimum monthly payment. If the Distributable Funds plus any additional Borrower funds are insufficient to pay all monthly accrued interest, unpaid accrued interest is added on the tenth day of the month to the principal amount of the Loan, such that the principal amount can increase over time.

16. As a condition precedent to Lender's execution of the Loan Agreement, Guarantors executed the First Amendment to Full Recourse Guaranty on or about October 16, 2009 (the "First Amendment"), a copy of which is attached hereto as Exhibit A-2. The First Amendment amended the terms of the Original Guaranty to conform and refer to the Loan Agreement, and affirmed that the Original Guaranty, as amended, was in full force and effect. The Original Guaranty, as amended by the First Amendment, is referred to herein as the "Full Recourse Guaranty."

17. On or about January 18, 2011, Goldman Sachs sold, assigned, transferred and conveyed to Plaintiff all of Goldman Sachs's right, title and interest in and to the Loan and the Loan Documents, including the Full Recourse Guaranty. Thereafter, Plaintiff became the "Lender" under the Loan Agreement and all Loan Documents, and entitled to all rights of the Lender thereunder.

18. On or about January 18, 2011, Goldman Sachs and Plaintiff notified Borrower and Guarantors of the transfer of the Loan to Plaintiff.

The Full Recourse Guaranty

19. In Section 1 of the Full Recourse Guaranty, Guarantors agreed to "unconditionally, absolutely and irrevocably and jointly and severally" guarantee to Lender due and punctual performance of "Guaranteed Obligations," consisting of the following:

a) "due and punctual payment by Borrower and any Loan Parties of (i) the Indebtedness, including but not limited to the principal of and premium, if any, and interest . . . on the Loan, when and as due, whether at maturity, **by acceleration . . . or otherwise**; and (ii) all other monetary obligations, including fees, costs, expenses and indemnities . . . of Borrower or any Loan Parties to the Lender under the Loan Agreement or the other Loan Documents" (Ex. A-1, Section 1(a)(emphasis added)); and

b) "due and punctual performance of all covenants, agreements, Obligations and liabilities of Borrower and any Loan Parties under or pursuant to the Loan Agreement and the other Loan Documents." (Id.).

20. Further, Guarantors expressly agreed in the Full Recourse Guaranty that:

a) "if the Guaranteed Obligations are not paid by the Borrower in accordance with their terms, or if any and all sums which are now or may hereafter become due from the Borrower to the Lender under the Loan Documents are not paid by the Borrower in accordance with their terms, or if any and all other Obligations are not performed by the Borrower in accordance with their terms," Guarantors will "immediately make such payments and perform such Guaranteed Obligations" (Ex. A-1, Section 1(b)); and

b) "to pay Lender on demand all reasonable costs and expenses (including court costs and reasonable attorneys' fees and disbursements) paid or incurred by Lender in endeavoring to collect the Guaranteed Obligations, to enforce the Guaranteed Obligations, or any portion thereof, or to enforce this Guaranty and until paid to Lender, such sums shall bear interest at the Default Rate set forth in the Loan Agreement." (Id.).

21. In the Full Recourse Guaranty, Guarantors broadly waived defenses to liability. Specifically, and without limitation of other waivers, Guarantors waived:

a) "to the fullest extent permitted by law," any "legal, equitable or surety defenses whatsoever to which Guarantor[s] might otherwise be entitled, it being the intention that the Guaranteed Obligations . . . are absolute, unconditional and irrevocable" (Ex. A-1, Section 5(ee));

b) "any defense based on or arising out of any defense that any other Loan Party may have to the payment of the Indebtedness or performance of the Obligations" (id., Section 14(f)(iv)); and

c) "all presentments, demands for performance, notices of nonperformance, . . . notices of acceleration . . . and demands and notices of every kind" (id., Section 14(f)(v)).

22. The Full Recourse Guaranty expressly provides that it is a "Guaranty of payment and performance and not of collection." (Ex. A-1, Section 6). The Full Recourse Guaranty further provides that Guarantors' liability thereunder "shall be primary, direct and immediate and not conditional or contingent upon the pursuit of any remedies against Borrower or any other person." (Ex. A-1, Section 6).

23. The Full Recourse Guaranty also provides that "Upon the occurrence of an Event of Default under this Agreement, the Note, the Loan Agreement or the other Loan Documents, or any of them, Lender shall have the right to enforce its rights, powers and remedies thereunder or hereunder . . . in any order, and all rights, powers and remedies available to Lender in such event shall be nonexclusive and cumulative of all other rights, powers and remedies provided

thereunder or hereunder or by law or in equity." (Ex. A-1, Section 7). Lender may elect to enforce the Full Recourse Guaranty against the Guarantors "without first having sought enforcement of any Loan Documents against Borrower or any collateral." (Ex. A-1, Section 13).

24. The Full Recourse Guaranty provides that it "shall be governed by, and construed in accordance with, the laws of the State of New York." (Ex. A-2, Section 1(D)(a)).

The Events of Default

1. Incurring additional indebtedness, acquiring an interest in a Senior Loan and pledging personal assets without Lender's consent

25. Beginning several months ago, a series of defaults occurred under the Loan Agreement, demonstrating the increasing inability or unwillingness of Borrower and its subsidiaries to satisfy their various financial obligations both to Lender and other lenders. The first default to arise concerned a mezzanine loan to a subsidiary of Borrower, known as the "Greenwich Portfolio Permitted Mezzanine Loan," in the original principal amount of $13,750,000. The Greenwich Portfolio Permitted Mezzanine Loan originally matured on June 1, 2010, which maturity date was extended by letter agreements to August 31, 2010. The Greenwich Portfolio Permitted Mezzanine Loan was senior in priority to the Loan and originated by a lender not a party to this action.

26. On or about September 2, 2010, Defendant Nesbitt advised Goldman Sachs that, on August 31, 2010, the Greenwich Portfolio Permitted Mezzanine Loan was repaid in full from the proceeds of four separate loans from "friends and family" and a fifth loan that Defendant Nesbitt had obtained "from Borrower" in the amount of $6,200,000. Defendant Nesbitt further advised that three of the aforementioned five loans were secured by assets owned by Defendant Nesbitt or Defendant Nesbitt Family Trust. The five loans are referred to herein as the "Repayment Loans."

27. Despite demand, Borrower failed to furnish Goldman Sachs with sufficient information or allow Goldman Sachs to review the complete documentation for the Repayment Loans. Borrower also failed to obtain Goldman Sachs's consent to the Repayment Loans.

28. Borrower thereby breached one or more provisions of the Loan Agreement, including, without limitation,

a) Section 3.2(e), which provides that, in the event that the Greenwich Portfolio Permitted Mezzanine Loan is repaid and not refinanced, various features of the Greenwich Portfolio Permitted Mezzanine Loan are to be incorporated into the Loan Documents, so as to assure, among other things, that Distributable Funds from the Greenwich portfolio flow through to the accounts established for the payment of interest on the Loan (Ex. B, Section 3.2(e));

b) Section 7.1(c), which precludes Guarantors from creating, or allowing the existence of a "Lien" upon any of their "Assets," as these terms are defined in the Loan Agreement, without Lender's prior written consent, which is necessary to prevent impairment of Lender's ability to recover on the Full Recourse Guaranty (Ex. B, Section 7.1(c)); and

c) Section 7.2(b), which precludes Borrower from incurring any additional Debt without Lender's prior written consent (Ex. B, Section 7.2(b)).

29. Additionally, Defendant Nesbitt has stated that he or his affiliates acquired certain rights with respect to the Greenwich Portfolio Permitted Mezzanine Loan, which statement is disputed by Lender, and, if true, would constitute a breach of Section 6.21(b) of the Loan Agreement. Section 6.21(b) of the Loan Agreement precludes any Transaction Party or their Affiliates from acquiring an interest in any Senior Loan—a term defined to include the

Greenwich Portfolio Permitted Mezzanine Loan—without "Lender's prior written consent in its sole and absolute discretion." (Ex. B, Section 6.21(b)).

30. The foregoing breaches of the Loan Agreement constitute Events of Default under Section 8.1 of the Loan Agreement.

31. Because Borrower and Guarantor have refused to provide full information about the Repayment Loans or the associated transactions, additional Events of Default also may have occurred as a result of Borrower's and Nesbitt's actions on or about August 31, 2010.

32. On September 2, 2010, and on several subsequent occasions, Goldman Sachs sought assurances, as well as related notices and information, regarding the Repayment Loans and Borrower's and Defendant Nesbitt's actions in connection therewith, but Borrower and Guarantors failed and refused to provide the requested assurances, notices and information. Such failure and refusal itself constitutes a breach of Section 6.11 of the Loan Agreement and an Event of Default under Section 8.1 of the Loan Agreement.

2. Occurrence of a Senior Event of Default

33. The Loan Agreement obligated Borrower to comply with the terms and conditions of certain "Senior Loans" described in Exhibit G to the Loan Agreement. (Ex. B, Section 8.1(e), pp. 10 and 22, and Ex. G thereto).

34. By letter dated November 2, 2010, a copy of which is attached hereto as Exhibit D, Borrower and Guarantors received notice from a Senior Lender for one of the portfolios of the maturity of a Senior Loan and the occurrence of an event of default thereunder for failure to repay such Senior Loan. That Senior Loan remains unpaid and the event of default thereunder remains uncured.

35. An event of default under a Senior Loan could lead to, among other things, a foreclosure of mortgages held by the Senior Lender against properties in a portfolio, thus threatening loss of significant assets and cash flow that form material aspects of the collateral for the Loan. Accordingly, an event of default under a Senior Loan is defined in the Loan Agreement as a Senior Event of Default and immediately constitutes an Event of Default under Section 8.1(e) of the Loan Agreement.

3. Failure to deposit Distributable Funds into Lender's Account

36. Borrower also had the obligation under the Loan Agreement to make daily deposits of generated "Distributable Funds" (as that term is defined in the Loan Agreement) into the appropriate Lender Account (Ex. B, Section 3.2(a)) and pp. 4, 5, 7-8), and until such time as such Distributable Funds are deposited into the appropriate Lender Account, to hold them in trust for the benefit of Lender, without commingling such Distributable Funds with any other funds or property of Borrower, and without permitting any of Borrower's subsidiaries or joint ventures to otherwise dispose of the Distributable Funds or any other Lender Account collateral. (Ex. B, Section 3.3(f) and p. 16).

37. In December 2010, approximately $168,000 in Distributable Funds were generated but not deposited into the appropriate Lender Account by the Borrower. In addition, other Distributable Funds were subsequently generated that were not deposited into the appropriate Lender Account. Borrower's failure to make the required deposit of Distributable Funds into the appropriate Lender Account constitutes a breach of Section 3.2(a) of the Loan Agreement and an Event of Default under 8.1(a) of the Loan Agreement.

4. **Failure to make interest payments on the Loan**

38. Under the Note and the Loan Agreement, Borrower had the obligation to pay, on the 10th calendar day of each month, interest on the "Principal Indebtedness" in an amount equal to the greater of (i) eight percent per annum on the Principal Indebtedness (the "Minimum Pay Rate") and (ii) with certain exclusions, the amount of Distributable Funds then on deposit in one of the Lender Accounts known as the "Peg Balance Account." During the continuance of an Event of Default, the Minimum Pay Rate increases to thirteen percent per annum.

39. On December 10, 2010, pursuant to these provisions, interest in the amount of $737,833.96 was due to be paid to Goldman Sachs in immediately available funds. As of such date, funds only in the amount of $464,895.36 were on deposit in the Lender Account, which sums were insufficient to pay the monthly interest payment due. Borrower failed to deposit any further funds sufficient to make the required interest payment or otherwise failed to pay the full amount of the interest payment due on December 10, 2010. In addition, Borrower failed to pay any part of the monthly interest payment due on January 10, 2011.

40. Each of Borrower's failures to pay monthly interest payments constitutes a breach of Section 1.4 of the Loan Agreement and an Event of Default under Sections 3.2(d) and 8.1(a) of the Loan Agreement.

Notices to Borrower and Guarantors

41. Subsequent to the aforementioned breaches, Goldman Sachs delivered to Borrower and Guarantors certain notices of Events of Default.

42. By letter dated November 19, 2010, Goldman Sachs notified Borrower and Guarantors that:

a) the occurrence of a Senior Event of Default resulted in an Event of Default under Section 8.1(e) of the Loan Agreement; and

b) the actions of Borrower and Defendant Nesbitt, on or about August 31, 2010—including the borrowing of the Repayment Loans—constituted breaches of Sections 3.2(e), 6.21(b), 7.1(c), and 7.2(b) of the Loan Agreement; Borrower's subsequent failure to provide the requested assurances, notices and information to Goldman Sachs regarding these transactions constituted a breach of Section 6.11 of the Loan Agreement; and all of the aforementioned breaches constituted Events of Default under Section 8.1 of the Loan Agreement.

43. By letter dated December 30, 2010, Goldman Sachs notified Borrower and Guarantors that:

a) Borrower's failure to deposit Distributable Funds into the appropriate Lender Account constituted an Event of Default under Sections 3.2(a) and 8.1(a) of the Loan Agreement; and

b) Borrower's failure to make the required interest payment in the full amount of $737,833.96 that was due on December 10, 2010 under the Loan Agreement and Note constituted an Event of Default under Sections 3.2(d) and 8.1(a) of the Loan Agreement.

44. Despite these notices from Goldman Sachs, Borrower has failed to cure these breaches and Events of Default under the Loan Documents.

Lender's Acceleration of the Loan

45. With respect to Lender's remedies upon the occurrence of an Event of Default, the Loan Agreement provides that:

a) Lender has the right to declare immediately due and payable all amounts currently outstanding on the Loan, together with all applicable interest, fees and costs (the Indebtedness") (Ex. B, Section 8.2 and p. 11);

b) Interest shall be payable during the continuance of such an Event of Default on the entire Indebtedness at the rate of five percent (5%) per year in excess of the Accrual Rate (the "Default Rate") (Ex. B, Sections 1.3(a)(ii) and 8.2(d) and p. 7); and

c) Interest at the Default Rate shall accrue on any judgment obtained by the Lender in connection with its enforcement of the Loan (id.).

46. The Loan Agreement also provides that all of the remedies that Lender is entitled to under the Loan Documents or otherwise in law or in equity are cumulative and may be exercised separately, successively or concurrently at Lender's sole discretion, without affecting Lender's resort to any other remedy or remedies vested in Lender by the Loan Documents or at law or in equity. (Ex. B, Section 8.2).

47. By letter dated January 20, 2011, Plaintiff notified Borrower and Guarantors that, due to the numerous Events of Default under the Loan Agreement that had not been cured and were ongoing, and in accordance with its rights under Section 8.2 of the Loan Agreement, Plaintiff had elected to accelerate the Loan and had declared all Indebtedness to be due and payable immediately, and in no event later than January 27, 2011.

48. In its January 20, 2011 notice to Borrower and Guarantors, Plaintiff also notified Guarantors that Borrower had failed to pay the Guaranteed Obligations, and demanded that Guarantors immediately pay such Guaranteed Obligations that are due or will become due, and pay the reasonable costs and expenses incurred by Lender in connection with the collection of those obligations.

49. Despite Plaintiff's demand, Guarantors have failed and refused to pay the amounts due and demanded.

Guarantors' Breach of the Full Recourse Guaranty

50. Guarantors have failed in their obligation under the Full Recourse Guaranty to ensure Borrower's due and punctual performance of all of Borrower's obligations under the Loan Agreement and other Loan Documents. Such failure by Guarantors constitutes a breach of Section 1(a) of the Full Recourse Guaranty.

51. Moreover, following Borrower's failure to pay the Guaranteed Obligations when due, Guarantors have failed to pay such Guaranteed Obligations, together with all applicable interest, costs and fees. Such failure on the part of Guarantors constitutes a breach of Section 1(b) of the Full Recourse Guaranty

AS AND FOR A FIRST CLAIM FOR RELIEF
(Breach of Contract)

52. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 51 as if fully set forth herein.

53. Plaintiff has fully complied with all of its obligations under the Loan Documents, if any, including, *inter alia*, its obligations under the Loan Agreement and the Full Recourse Guaranty.

54. Notwithstanding Plaintiff's compliance with all of its obligations under the Loan Documents, Guarantors have refused and ignored Plaintiff's demands to cure Borrower's Defaults under the Loan Agreement.

55. Notwithstanding Plaintiff's compliance with all of its obligations under the Loan Documents, Guarantors have refused and ignored Plaintiff's demands to pay the Guaranteed Obligations that are due under the Full Recourse Guaranty, and to pay the reasonable costs and

expenses incurred by Plaintiff in connection with the collection of those obligations (which costs and expenses also recoverable under the Full Recourse Guaranty).

56. Guarantors have breached the Full Recourse Guaranty by, *inter alia*, (i) failing to ensure Borrower's due and punctual performance of its obligations under the Loan Documents; and (ii) following Borrower's failure to pay Borrower's obligations when due, failing to pay the Guaranteed Obligations, together with all applicable interest, costs and fees.

57. As a direct and proximate result of the breach of the Full Recourse Guaranty by Guarantors, Plaintiff has been damaged.

58. Based upon the foregoing breaches by Guarantors of their contractual obligations under the Full Recourse Guaranty, Plaintiff is entitled to a judgment against the Guarantors, jointly and severally, in an amount not less than the principal amount of $70,548,812.60, together with applicable interest (as of January 28, 2011, in the amount of $881,860.16), as well as reasonable attorneys' fees and costs in an amount to be determined (which are recoverable under the Full Recourse Guaranty).

WHEREFORE, Plaintiff demands judgment against each of the Defendants as follows:

(a) on the First Claim for Relief, against the Guarantors, jointly and severally, in an amount not less than $70,548,812.60, together with applicable interest, as well as reasonable attorneys' fees and costs in an amount to be determined;

(b) for the reasonable costs, expenses and attorneys' fees incurred by Plaintiff in enforcing its rights, in an amount to be determined; and

(c) for such other and further relief as is just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
February 1, 2011

KATTEN MUCHIN ROSENMAN LLP

By: ______________________
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